

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MARCUS HARRIS,

Plaintiff,

v.

Case No. 19-C-1107

C.O. JESTER and
MILWAUKEE COUNTY JAIL ADMINISTRATION,

Defendants.

SCREENING ORDER

Plaintiff Marcus Harris, who is currently serving a state prison sentence at Dodge Correctional Institution and representing himself, filed a complaint under 42 U.S.C. § 1983, alleging that his civil rights were violated. This matter comes before the court on Plaintiff's motion for leave to proceed without prepaying the full filing fee and to screen the complaint.

MOTION TO PROCEED WITHOUT PREPAYMENT OF THE FILING FEE

Plaintiff has requested leave to proceed without prepayment of the full filing fee (*in forma pauperis*). A prisoner plaintiff proceeding *in forma pauperis* is required to pay the full amount of the \$350.00 filing fee over time. *See* 28 U.S.C. § 1915(b)(1). Plaintiff has filed a certified copy of his prison trust account statement for the six-month period immediately preceding the filing of his complaint, as required under 28 U.S.C. § 1915(a)(2), and has been assessed and paid an initial partial filing fee of \$17.92. Plaintiff's motion for leave to proceed without prepaying the filing fee will be granted.

SCREENING OF THE COMPLAINT

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b). A claim is legally frivolous when it lacks an arguable basis either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992); *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Hutchinson ex rel. Baker v. Spink*, 126 F.3d 895, 900 (7th Cir. 1997).

To state a cognizable claim under the federal notice pleading system, Plaintiff is required to provide a “short and plain statement of the claim showing that [he] is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The complaint must contain sufficient factual matter “that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The court accepts the factual allegations as true and liberally construes them in the plaintiff’s favor. *Turley v. Rednour*, 729 F.3d 645, 651 (7th Cir. 2013). Nevertheless, the complaint’s allegations “must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555 (citation omitted).

ALLEGATIONS OF THE COMPLAINT

Plaintiff claims that he asked Defendant Correctional Officer Jester to be moved to a different cell on multiple occasions because he did not want to slip and fall on the water leaking from his malfunctioning sink. When Defendant inspected the sink in Plaintiff’s cell, water spilled all over her and the floor. Defendant did not provide Plaintiff with any supplies to clean up the

water and did not assist him in doing so. Defendant advised Plaintiff that she would put in a work order for the sink. An hour or two later, Defendant told the inmates that it was time to eat. Plaintiff again asked to be moved to a different cell, and Defendant responded that he would not be assigned to a different cell. When Plaintiff returned to his cell after his meal, he slipped and fell on his back. After his fall, Plaintiff was taken to the Health Services Unit to see a doctor. Plaintiff seeks compensation for the injuries he sustained from the fall and the damage caused by the malfunctioning sink.

THE COURT'S ANALYSIS

The Eighth Amendment prohibits “cruel and unusual punishments” and imposes a duty on prison officials to take reasonable measures to guarantee an inmate’s safety and to ensure that inmates receive adequate medical care. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994); *see* U.S. Const. amend. VIII. A prison official’s “deliberate indifference” to a prisoner’s medical needs or to a substantial risk of serious harm violates the Eighth Amendment. *See Farmer*, 511 U.S. at 828. An inmate’s claim for deliberate indifference must establish “(1) an objectively serious medical condition; and (2) an official’s deliberate indifference to that condition.” *Gomez v. Randle*, 680 F.3d 859, 865 (7th Cir. 2012) (citation omitted). Deliberate indifference requires more than negligence; it requires that the official know of, yet disregard, an excessive risk to the inmate’s health or safety. *Farmer*, 511 U.S. at 835, 837.

Plaintiff’s claim sounds in negligence rather than in deliberate indifference. Generally, a wet floor presents “little risk of serious harm to inmates, and thus allowing a wet floor to go unremedied would not violate the Eighth Amendment.” *Watkins v. Lancor*, 558 F. App’x 662, 665 (7th Cir. 2014); *see also Bell v. Ward*, 88 F. App’x 125 (7th Cir. 2004) (affirming the dismissal of

a slip-and-fall claim on § 1915A review because accumulation of water on prison floor did not present a risk of serious injury); *Carroll v. DeTella*, 255 F.3d 470, 472 (7th Cir. 2001) (“[F]ailing to provide a maximally safe environment, one completely free from . . . safety hazards, is not [a constitutional violation].”). Even if the allegations in Plaintiff’s complaint suggest that Defendant was negligent, those allegations are insufficient to support a claim of deliberate indifference. As a result, Plaintiff cannot proceed on a deliberate indifference claim against Defendant.

Plaintiff also asserts state law claims against the defendants. Because the court has dismissed all of his federal law claims, it declines to exercise supplemental jurisdiction over his state law claims pursuant to 28 U.S.C. § 1367(c)(3). Plaintiff’s state law claims will be dismissed without prejudice so that he may pursue them in state court.

IT IS THEREFORE ORDERED that Plaintiff’s motion for leave to proceed *in forma pauperis* (Dkt. No. 2) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff’s federal law claims are **DISMISSED with prejudice** pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1) **for failure to state a claim** and that his state law claims are **DISMISSED without prejudice**.

IT IS FURTHER ORDERED that the agency having custody of the prisoner shall collect from his institution trust account the \$332.08 balance of the filing fee by collecting monthly payments from Plaintiff’s prison trust account in an amount equal to 20% of the preceding month’s income credited to the prisoner’s trust account and forwarding payments to the Clerk of Court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this action. If Plaintiff

is transferred to another institution, the transferring institution shall forward a copy of this Order along with Plaintiff's remaining balance to the receiving institution.

IT IS FURTHER ORDERED that the Clerk of Court enter judgment accordingly.

IT IS FURTHER ORDERED that copies of this order be sent to the officer in charge of the agency where the inmate is confined.

Dated at Green Bay, Wisconsin this 29th day of August, 2019.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court

This order and the judgment to follow are final. Plaintiff may appeal this court's decision to the Court of Appeals for the Seventh Circuit by filing in this court a notice of appeal within **30 days** of the entry of judgment. *See* Fed. R. App. P. 3, 4. This court may extend this deadline if a party timely requests an extension and shows good cause or excusable neglect for not being able to meet the 30-day deadline. *See* Fed. R. App. P. 4(a)(5)(A). If Plaintiff appeals, he will be liable for the \$505.00 appellate filing fee regardless of the appeal's outcome. If Plaintiff seeks leave to proceed *in forma pauperis* on appeal, he must file a motion for leave to proceed *in forma pauperis* with this court. *See* Fed. R. App. P. 24(a)(1). Plaintiff may be assessed another "strike" by the Court of Appeals if his appeal is found to be non-meritorious. *See* 28 U.S.C. § 1915(g). If Plaintiff accumulates three strikes, he will not be able to file an action in federal court (except as a petition for habeas corpus relief) without prepaying the filing fee unless he demonstrates that he is in imminent danger of serious physical injury. *Id.*

Under certain circumstances, a party may ask this court to alter or amend its judgment under Federal Rule of Civil Procedure 59(e) or ask for relief from judgment under Federal Rule of Civil Procedure 60(b). Any motion under Federal Rule of Civil Procedure 59(e) must be filed within **28 days** of the entry of judgment. Any motion under Federal Rule of Civil Procedure 60(b) must be filed within a reasonable time, generally no more than one year after the entry of judgment. The court cannot extend these deadlines. *See* Fed. R. Civ. P. 6(b)(2).

A party is expected to closely review all applicable rules and determine, what, if any, further action is appropriate in a case.